

222452

SLOVER & LOFTUS

ATTORNEYS AT LAW

1924 SEVENTEENTH STREET, N.W.
WASHINGTON, D.C. 20006-0009

WILLIAM L. SLOVER
C. MICHAEL LOFTUS
JOHN H. LE SEUR
KELVIN J. DOWD
ROBERT D. ROSENBERG
CHRISTOPHER A. MILLS
FRANK J. PERUOLIZZI
ANDREW B. KOLESAR III
PETER A. PFOHL
DANIEL M. JAFFE
STEPHANIE M. PISANELLI
JOSHUA M. HOFFMAN

OF COUNSEL
DONALD G. AVERY

TELEPHONE
(202) 847-7170

FAX
(202) 847-3619

WRITER'S E-MAIL

jhl@sloverandloftus.com

May 27, 2008

VIA E-FILING

The Honorable Anne K. Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423-0001

Re: STB Docket No. 42105. *Dairyland Power
Cooperative v. Union Pacific Railroad Company*

Dear Ms. Quinlan,

On May 23, 2008, counsel for Union Pacific Railroad Company ("UP") filed its second letter in the space of four days in purported support of UP's pending Motion to Dismiss. In its second letter, UP claims that a rail carrier can collect fuel surcharges from a shipper that exceed the incremental fuel cost increases the carrier incurs in providing the service to the shipper. The Board clearly and authoritatively rejected UP's argument in Rail Fuel Surcharges.¹

the term "fuel surcharge" most naturally suggests a charge to recover increased fuel costs associated with the movement to which it is applied. If it is used instead as a broader revenue enhancement measure, it is mislabeled. We believe that imposing rate

¹ Rail Fuel Surcharges, STB Ex Parte No. 661 (STB served Jan. 26, 2007).

The Honorable Anne K. Quinlan
May 27, 2008
Page 2

increases [denominated fuel surcharges] .
when there is no real correlation between the
rate increase and the increase in fuel costs for
that particular movement to which the surcharge
is applied, is a misleading and ultimately
unreasonable practice

Id. at 7, Dairyland Power Cooperative's ("Dairyland") Reply in Opposition to Union
Pacific's Motion to Dismiss at 3-6 (Apr. 11, 2008)

Also, as Dairyland has previously informed the Board, "[i]f the Board
denies UP's Motion [to Dismiss] . . . Dairyland's evidence will clearly demonstrate that
UP's fuel surcharge collections on the issue traffic vastly exceed the incremental fuel cost
increases UP has incurred in providing the service " Id. at 10

Finally, UP has evidently decided upon a strategy of impermissibly
supplementing its Motion to Dismiss through a series of letters. See 49 C.F.R.
§1104.13(c) ("[a] reply to a reply is not permitted"). Dairyland requests that UP's Motion
to Dismiss be denied promptly.

Respectfully submitted,



John H. LeSeur
An Attorney for
Dairyland Power Cooperative

cc: UP Counsel